

### REMARKS

Pending Claims 1-14, 16-34, 36-38, 40, 43, 60, 63, 64 and 66-79 stand rejected under 35 U.S.C. § 112, first paragraph, in light of Paper 19, the non-final Office Action mailed August 1, 2003. No art has been applied against the claims. Claims 80-82 are new. Applicants respectfully traverse the rejections for the reasons presented below.

For clarity, independent Claims 38, 40, 60 and 63 have been amended.

No new matter is believed to have been added to the claims. With regard to Claims 80-82, support may be found, for example, at page 48, 2<sup>nd</sup> paragraph, 1<sup>st</sup> sentence of the original specification, and page 10, 2<sup>nd</sup> paragraph, 2<sup>nd</sup>-to-last sentence.

With regard to the Examiner's first question at page 2 of the Office Action, peanut butter falls within the definition of "gel" found at page 7 of the instant application (i.e., "'gel' or 'gelling agent' means substances that qualify as gels as that term is normally used in the art of food science, and refers to a colloid in a form more solid than a sol"). Claim 60 has been amended in this regard.

With regard to the Examiner's questions at page 2, last paragraph of the Office Action, Applicants have revised the specification to make it clear that "different food items" is defined here to include not only food items whose differences are visually discernible at the surface (e.g., different color ice cream) but also food items whose texture, color, organoleptic or other differences are discernible to the consumer. No new matter is believed to have been added. Thus, for purposes of the instant application, vanilla and chocolate ice cream would in fact constitute "different food items."

With regard to the Examiner's questions at pages 3-4 of the Office Action, there is no single statement of criticality in the specification. Various processing steps, and various structural components, as identified in the specification, may be useful and/or important in ensuring non-mixing of the two or more food items during extrusion and packaging. The "key steps" the Examiner refers to are mentioned in the context of the peanut butter/jelly

embodiment. (For example, the "second surprising result" at page 10 refers to the separation of oil from the peanut butter which can cause a solid residue too thick to pump.) These "key steps" would not necessarily be as desirable when coextruding and packaging other food items. Either step may be useful, and it may be in a discrete embodiment that either or both of these processing steps may not be required, as those of ordinary skill in the art will understand from the specification. Use of a vertical form and fill machine (which substantially reduces tangential shear within the products, as opposed to the horizontal streams of Ahad, U.S. Patent No. 6,350,483), together with coextrusion, portion/weight control, the use of divider plates, and other separately claimed elements, may be desirable or necessary for the given food products which are being packaged. There is no single "minimally necessary" "super processing step" by which the desired, coextruded end product is created. However, the guidance provided by the instant specification is sufficient to allow those of ordinary skill in the art to coextrude and package various food items within a single package with each food item retaining its individual product identity, using the articulated principles of the present invention. The pending claims define separate inventions which are each believed to be useful, novel and nonobvious in this regard.

Finally, for the Examiner's convenience, Applicants enclose with this Office Action several samples of the coextruded singles slices made according to the present invention, including grape jelly/peanut butter and strawberry jelly/peanut butter laminate slices.

For the foregoing reasons, Applicants respectfully suggest that the pending claims are patentable over the cited prior art of record and requests an allowance thereof. If the next written communication is intended to be other than a notice of allowance of the claims, Applicants request that the undersigned be contacted to discuss this case prior to the mailing of such communication.

Respectfully submitted,



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## **Clean and Marked-Up Versions Of Substitute Specification**

### **Marked-Up Version of Specification Amendments (page 7, last paragraph, of original specification as amended)**

“Maintaining individual product identity” means two or more different food items provided together in the same package and present in discreet phases such that each of the separate food items may be [visually] discerned at the surface of the food portion by the consumer using attributes of color, texture, or organoleptic or other differences.

### **Clean Version (page 7, last paragraph, of original specification as amended)**

“Maintaining individual product identity” means two or more different food items provided together in the same package and present in discreet phases such that each of the separate food items may be discerned at the surface of the food portion by the consumer using attributes of color, texture, or organoleptic or other differences.